# STATE OF MICHIGAN

# COURT OF APPEALS

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ROBERT ORIN SAYLES,

Plaintiff-Appellee,

v

SUSAN ELAINE SAYLES,

Defendant-Appellant.

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UNPUBLISHED
December 3, 1999

No. 212810
Jackson Circuit Court
LC No. 97-081400 DM

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Plaintiff Robert Orin Sayles and defendant Susan Elaine Sayles were married in October 1993, and a final judgment of divorce was entered on June 10, 1998. Plaintiff had physical custody of his two daughters from a previous marriage—Alexandria, born December 10, 1990, and Renee, born September 20, 1992—throughout his marriage to defendant. The parties had one child, Benjamin, who was born during the marriage. Defendant appeals as of right from the lower court's denial of her claim as an equitable parent of Alexandria and Renee. We affirm.

On appeal, defendant contends that the lower court erred as a matter of law when it failed to grant her parenting time with Alexandria and Renee. In a child custody dispute, questions of law are to be reviewed under a "clear legal error" standard. *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994). In such cases, the court commits legal error when it incorrectly chooses, interprets, or applies the law. *Id.*; *Schoensee v Bennett*, 228 Mich App 305, 312; 577 NW2d 915 (1998).

"Michigan recognizes two doctrines, other than adoption, by which one who is not the biological parent of a child may be legally considered to be the parent of the child—equitable parenthood and equitable estoppel." *Bergan v Bergan*, 226 Mich App 183, 186; 572 NW2d 272 (1997). Defendant first argues that the equitable parent doctrine applies to her. We disagree.

The equitable parent doctrine originated in Michigan with this Court's decision in *Atkinson v Atkinson*, 160 Mich App 601; 408 NW2d 516 (1987). *Atkinson* dealt with a child born during the parties' marriage. *Id.* at 604. During the parties' divorce, the husband sought visitation or custody of the child, which the wife opposed, claiming that the husband was not the biological father of the child.

*Id*. at 604-605. This Court held that under the circumstances, the husband was an equitable parent and should have been treated as if there was a biological relationship between him and the child. *Id*. at 608-609. This Court stated:

> [W]e adopt the doctrine of "equitable parent " and find that a husband who is not the biological father of a child born or conceived during the marriage may be considered the natural father of that child where (1) the husband and the child mutually acknowledge a relationship as father and child, or the mother of the child has cooperated in the development of such a relationship over a period of time prior to the filing of the complaint for divorce, (2) the husband desires to have the rights afforded to a parent, and (3) the husband is willing to take on the responsibility of paying child support. [*Id*. (emphasis added).]

There is no dispute that Alexandria and Renee are not the biological children of defendant, and they were not born during the marriage of the parties. As such, defendant fails the *Atkinson* test, and the equitable parent doctrine does not apply.

Defendant argues that we should still recognize what are in essence "stepparent rights." We disagree and conclude that "the Legislature, not the judiciary, is the appropriate entity to weigh the sensitive public policy issues involved in creating or extending parental rights to persons with no biological . . . link to a child." *Van Zahorik*, 460 Mich 320, 337; 597 NW2d 15 (1999).

As stated by this Court in *Van v Zahorik*, 227 Mich App 90, 97-98; 575 NW2d 566 (1997), aff'd 460 Mich 320; 597 NW2d 15 (1999):

> It must be kept in mind that an equitable parent is, in the eyes of the law, entitled to be treated as a natural parent . . . , and once a person is recognized as an equitable parent, that status is permanent . . . . Because of that, we feel that recognizing a third person as an equitable parent and placing them on par with the child's biological parents when it comes to rights and responsibilities in regard to the child should be done with the utmost care and only after great consideration and deliberation. When there is no legally recognized relationship, . . . such as natural parentage or adoption, between a person and a child, that person is essentially just an interested third party, albeit they may have lived with the child's natural parent and care deeply for the child. . . . It is not difficult to imagine cases in which multiple third parties could make such a claim. We are well aware of the fact that the overriding concern must be the best interest of the child and that in some circumstances that interest may best be served by recognizing a third party as an equitable parent. However, we are of the opinion that the decision when a third party with no legal relationship to the . . . child should be accorded such recognition, and the considerations behind such a determination, is policy-based and should be legislatively enacted. [Citations omitted.]

We decline to expand the equitable parent doctrine and conclude that the trial court did not err as a matter of law when it failed to apply such a doctrine.

Defendant also argues that based on plaintiff's earlier representations, he is estopped from now denying defendant's "mother status" to the girls. We disagree. In *Van, supra*, 460 Mich 335, quoting *Soltis v First of America Bank-Muskegon*, 203 Mich App 435, 444; 513 NW2d 148 (1994), our Supreme Court stated:

> Equitable estoppel arises where a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party will be prejudiced if the first party is allowed to deny the existence of those facts.

Traditionally, equitable estoppel has been applied in cases where the parties are married, but the husband is not the biological father of the child born in the marriage. See, generally, *Johns v Johns*, 178 Mich App 101; 443 NW2d 446 (1989); *Nygard v Nygard*, 156 Mich App 94; 401 NW2d 323 (1986); *Johnson v Johnson*, 93 Mich App 415; 286 NW2d 886 (1979). In none of the cases has this doctrine been used to grant a stepparent parenting time, and we decline to apply this doctrine to the instant factual situation. Extension of the equitable estoppel doctrine is better left to the Legislature. *Van, supra*, 460 Mich 337.

Additionally, we also question defendant's use of this doctrine. This Court in *Van, supra*, 227 Mich App 102, expressed concern over the possible misuse of the doctrine of equitable estoppel when it stated:

> In addition, we question, from a general standpoint, whether plaintiff can utilize equitable estoppel in the manner he attempts. Equitable estoppel is not a cause of action and therefore provides no remedy. *Hoye v Westfield Ins Co*, 194 Mich App 696, 707; 487 NW2d 838 (1992); see also *Bellows v Delaware McDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994). The doctrine is generally available as protection from a defense raised by a defendant or as an aid to the plaintiff, but it has never been recognized as a cause of action in itself. *Hoye*, *supra* at 705-707. In the case at bar, plaintiff does not assert equitable estoppel as a defense against defendant, or even as an aid to his claim. Plaintiff essentially asserts equitable estoppel as a cause of action and seeks relief on that ground. As a result, we think plaintiff misuses the doctrine.

Last, defendant argues that the Child Custody Act provides that the circuit court may provide for parenting time "by others," and in using that phrase, the Legislature "opened the door for parties other than biological relatives to have standing to petition for parenting time." See MCL 722.27(1)(b); MSA 25.312(7)(1)(b). However, defendant fails to provide any supporting argument or analysis beyond the assertion itself. A bald assertion without supporting argument is waived on appeal. *Impullitti v Impullitti*, 163 Mich App 507, 512; 415 NW2d 261 (1987). Further, plaintiff's unsupported argument here is belied by the clear implication of *Van, supra* 460 Mich 337, that the Legislature has not yet provided statutory authority for awarding parenting time to persons, like defendant, who are biologically unrelated to a child.

Moreover, with regard to parenting time in the context of MCL 722.27(1)(b); MSA 25.312(7)(1)(b), this Court recently determined that this statute requires that the existing custody dispute be "properly" before the circuit court. *Terry v Affrum (On Remand)*, ___ Mich App ___; ___ NW2d ____ (Docket Nos. 210862; 213582, issued September 17, 1999), slip op p 5. In the present case, the "child custody dispute" with respect to Alexandria and Renee was not "properly" before the circuit court. Plaintiff testified at trial that he was awarded custody of Alexandria and Renee after he and the children's biological mother divorced. Defendant, as the children's stepmother, was not in a position to contest this award of custody to plaintiff, the children's biological father. Further, as noted by the trial court, the children's biological mother has also been awarded court-ordered parenting rights, and another award of parenting rights would mean that at least three people would have to be considered when dividing the time of the children. In addition, although we have concluded that defendant has no legal right to continue a relationship with Alexandria and Renee, we also state that "there is also no legal prohibition against [defendant] and the children maintaining a relationship." *Van, supra*, 460 Mich 337. However, this decision must be left to plaintiff.

We affirm.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh